

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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ELLEN ERVIN,

Plaintiff,

COMPLAINT

- against -

LYNDON S. BROOKS and ELRAC INC.,

Case No. 08 CV 5705 (LAP)(DFE)

ECF CASE

Defendants.

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Plaintiff complaining of the defendants by her attorney, KEVIN CONCAGH, P.C., respectfully alleges upon information and belief as follows:

FIRST CAUSE OF ACTION

1. The plaintiff, ELLEN ERVIN, resides at 2727 Palisade Avenue, Bronx, N.Y. 10463, and is a "citizen" of the State of New York pursuant to 28 USC 1332.
2. The defendant LYNDON S. BROOKS resides at 13 Cedarbrook Avenue, Bridgeton, N.J. 08302 and is a "citizen" of the State of New Jersey pursuant to 28 USC 1332.
3. The defendant ELRAC Inc. is a corporation organized and existing pursuant to the laws of the State of New Jersey and maintains its principal place of business at 1550 Route 23 North, Wayne, N.J. 07470, and is a "citizen" of the State of New Jersey pursuant to 28 USC 1332.
4. Jurisdiction of this Court is based upon the diversity of citizenship of the parties pursuant to 28 USC 1332 and the amount in controversy, exclusive of interest and costs, exceeds Seventy-Five Thousand (\$75,000.00) Dollars.

5. This action falls within one or more of the exceptions set forth in New York CPLR 1602.

6. At all times herein mentioned the defendant LYNDON S. BROOKS was the operator of a 2008 Chevrolet truck bearing New Jersey license plate number WEV11L.

7. At all times herein mentioned the defendant ELRAC Inc. was the owner of a 2008 Chevrolet truck bearing New Jersey license plate number WEV11L.

8. At all times hereinafter mentioned, the plaintiff, ELLEN ERVIN, was a pedestrian in a crosswalk on Madison Avenue at East 90th Street, New York, N.Y.

9. On or about April 7, 2008, at about 7:15 p.m., the defendant LYNDON S. BROOKS was operating his vehicle on Madison Avenue at its crosswalk at East 90th Street, New York, N.Y.

10. At the aforesaid time and place, the vehicle operated by LYNDON S. BROOKS was operated in a negligent, careless, and reckless manner.

11. At the aforesaid time and place, the defendant LYNDON S. BROOKS violated the laws of the State of the New York including but not limited to NYVTL Sec. 1111.

12. At the aforesaid time and place, and more particularly in the crosswalk on Madison Avenue at East 90th Street, the vehicle operated by the defendant LYNDON S. BROOKS was in collision with the plaintiff ELLEN ERVIN.

13. At the aforesaid time and place, and more particularly in the crosswalk on Madison Avenue at East 90th Street, the vehicle operated by the defendant LYNDON S. BROOKS was in contact with the plaintiff, ELLEN ERVIN.

14. Said collision and/or contact was caused solely and wholly by reason of the negligence, carelessness, and recklessness of the defendants and their agents, servants and/or employees, and the plaintiff, ELLEN ERVIN, did not contribute thereto.

15. The vehicle operated by the defendant LYNDON S. BROOKS was dangerous and defective and unfit for the purpose intended.

16. The defendant ELRAC Inc., its agents, servants and/or employees was negligent, careless and reckless in entrusting to the defendant LYNDON S. BROOKS the aforesaid vehicle.

17. At all times herein mentioned, the vehicle operated by the defendant LYNDON S. BROOKS was not being operated pursuant to a valid rental agreement.

18. As a result of the foregoing, the plaintiff, ELLEN ERVIN, was caused to sustain serious and severe permanent personal injuries with related pain and suffering and economic loss, as defined in section 5102(d) of the Insurance Law of the State of New York, giving further jurisdiction to this Court pursuant thereto.

19. By reason of the foregoing, the plaintiff, ELLEN ERVIN, has been damaged in the sum of TEN MILLION (\$10,000,000) DOLLARS.

WHEREFORE, the plaintiff demands a jury trial and judgment against the defendants on the cause of action herein alleged as follows:

FIRST CAUSE OF ACTION: TEN MILLION (\$10,000,000) DOLLARS
together with interest and the costs and disbursements of this action.

Dated: New York, New York
June 25, 2008

KEVIN CONCAGH, P.C.

Attorneys for Plaintiffs
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By: _____ /S/
KEVIN CONCAGH (9144 KC)